

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

KEVIN M. RAPP (Ariz. Bar No. 014249, kevin.rapp@usdoj.gov)
MARGARET PERLMETER (Ariz. Bar No. 024805, margaret.perlmet@usdoj.gov)
PETER S. KOZINETS (Ariz. Bar No. 019856, peter.kozinets@usdoj.gov)
ANDREW C. STONE (Ariz. Bar No. 026543, andrew.stone@usdoj.gov)
JOHN J. KUCERA (Cal. Bar No. 274184, john.kucera@usdoj.gov)
Assistant U.S. Attorneys
40 N. Central Avenue, Suite 1800
Phoenix, Arizona 85004-4408
Telephone (602) 514-7500

BRIAN BENCZKOWSKI
Assistant Attorney General
Criminal Division, U.S. Department of Justice

REGINALD E. JONES (Miss. Bar No. 102806, reginald.jones4@usdoj.gov)
Senior Trial Attorney, U.S. Department of Justice
Child Exploitation and Obscenity Section
950 Pennsylvania Ave N.W., Room 2116
Washington, D.C. 20530
Telephone (202) 616-2807
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Michael Lacey, et al.,

Defendants.

CR-18-422-PHX-SPL (BSB)

**UNITED STATES' RESPONSE TO
DEFENDANTS' JOINT MOTION
FOR DESIGNATION OF 39
INDVERTENTLY DISCLOSED
DOCUMENTS ORDERED
DESTROYED BY THE COURT TO
BE PRESERVED AS PART OF THE
IN CAMERA RECORD IN THE
CASE (DOC. 453)**

SUMMARY OF THE ARGUMENT

To date, counsel for Michael Lacey, James Larkin, Scott Spear, and Andrew Padilla have not confirmed that the 39 inadvertently disclosed documents have been destroyed. The Court ordered these documents destroyed within five days of its January 28, 2019 Order.

1 On the day the government received the Order, it sent correspondence to defense counsel
2 that both identified the 39 subject documents and requested confirmation after the
3 documents had been destroyed. Counsel for these four defendants have not explicitly
4 confirmed that these documents have been destroyed. Accordingly, the government
5 requests the Court order defense counsel to comply with its Order (CR 449) within 24 hours,
6 or show cause why they are not in contempt. In response to Defendants' motion, the
7 government previously filed 22 of the 39 inadvertently disclosed documents *ex parte under*
8 *seal* for the Court's *in camera* review and has no objection to Defendants' request to have
9 all 39 inadvertently disclosed documents ordered destroyed by the Court being made part
10 of the *in camera* record in the case.

11 **STATEMENT OF RELEVANT FACTS**

12 On January 28, 2019, the Court issued an Order granting the United States' motion
13 to compel destruction of 39 inadvertently disclosed documents. (*See* CR 449 (filed *under*
14 *seal*.) The Court's Order directed the government to provide defense counsel with a list
15 identifying the 39 documents that must be destroyed within five days of the Court's Order.
16 (*See id.* at 7.) On January 31, 2019, the government sent an email to defense counsel
17 attaching the Court's Order and a list identifying the 39 documents to be destroyed.¹ (*See*
18 Exhibits A and B.) The government also requested each defense counsel sign and return a
19 statement acknowledging that they had complied with the Court's Order and destroyed the
20 39 documents at issue. (*See* Exhibit C.) On February 4, 2019, counsel for John Brunst and
21 Joye Vaught returned a signed statement to the government confirming that they had
22 destroyed the 39 inadvertently disclosed documents.

23 On February 6, 2019, Defendants filed a joint motion for designation of the 39
24 documents ordered destroyed by the Court be preserved as part of the *in camera* record in
25 the case. (CR 453.) The joint motion indicated that "Defendants are in the process of
26 destroying the 39 documents," and requested the court "issue an order preserving all 39
27 documents as part of the *in camera* docket associated with this case." (CR 453 at 2.)

28 ¹ Because the Court's Order was issued *under seal*, it was mailed to all counsel. Counsel for the government received the Order on January 31, 2019.

Moreover, on February 7, 2019, the government received emails from defense counsel for Lacey, Spear, and Padilla requesting the 39 inadvertently disclosed documents be preserved as part of the case record. (*See* Exhibit D.) However, to date, the government has yet to receive confirmation from defense counsel for Lacey, Larkin, Spear, and Padilla that they have complied with the Court's January 28, 2019 Order to destroy the 39 inadvertently disclosed documents.

ARGUMENT

More than three weeks after the Court's January 28, 2019 Order compelling Defendants to destroy 39 inadvertently disclosed documents, defense counsel for Lacey, Larkin, Spear, and Padilla have yet to confirm to the government that they have destroyed the subject documents.² Counsel should be ordered to destroy the 39 inadvertently disclosed documents within 24 hours or show cause why they are not in contempt of the Court's Order.

Additionally, the government filed the 22 inadvertently disclosed work-product documents *ex parte under seal* as exhibits to its motion to compel destruction of inadvertently disclosed documents for the Court's *in camera* review. (*See* CR 343; Attachment (1) Affidavit of Reginald E. Jones; Exhibits A-V (filed *under seal*).) If the Court requests the government file the remaining 17 inadvertently disclosed documents *ex parte under seal* for the *in camera* record in this case, the government will promptly do so.

Respectfully submitted this 20th day of February, 2019.

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

BRIAN BENCZKOWSKI
Assistant Attorney General
Criminal Division, USDOJ

² Defense counsel for these defendants did not return the letter the government attached to its January 31, 2019 email. Rather, Mr. Padilla's counsel sent an email that stated, "[w]e comply as does the Government with all Court orders." (Ex. D.) Counsel for Mr. Lacey then responded, "I agree with Mike," as did counsel for Mr. Spear. (*Id.*) No response was received from counsel for Mr. Larkin, or from Davis Wright Tremaine—attorneys for both Mr. Lacey and Mr. Larkin.

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/s/ Reginald E. Jones
REGINALD E. JONES
Senior Trial Attorney
U.S. Department of Justice, Criminal Div.
Child Exploitation and Obscenity Section

KEVIN M. RAPP
MARGARET PERLMETER
PETER S. KOZINETS
ANDREW C. STONE
JOHN J. KUCERA
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this date, February 20, 2019, I transmitted the foregoing under-seal document for filing to the Clerk of the United States District Court and sent a copy via electronic mail to: Paul J. Cambria Jr. Esq. and Erin e. McCampbell, Esq., Lipsitz Green Scime Cambria, LLC, 42 Delaware Ave, Suite 120, Buffalo, NY 14202, **pcambria@lglaw.com** and **emccampbell@lglaw.com**, Thomas H. Bienert, Jr., Esq., Anthony R. Bisconti, Esq., Kenneth M. Miller, Esq., and Whitney Bernstein, Esq., Bienart, Miller & Katzman, PLC, 903 Calle Amanecer, Suite 350, San Clemente, CA 92673, **tbienert@bmkattorneys.com**, **tbisconti@bmkattorneys.com**, **kmiller@bmkattorneys.com**, **wbernstein@bmkattorneys.com**; Mike Piccarreta, Esq., Piccarreta Davis Keenan Fidel, PC, 2 East Congress Street, Suite 1000, Tucson, AZ 85701, **mlp@pd-law.com**; Jim Grant Esq., Davis Wright Termaine, LLP, 1201 Third Avenue, Suite 2200, Seattle, WA 98101, **jimgrant@dwt.com**; Michael D. Kimerer, Esq. and Rhonda Elaine Neff, Esq., 1313 E. Osborn Road, Suite 100, Phoenix, AZ 85014, **MDK@kimerer.com** and **rneff@kimerer.com**; Steve Weiss Esq., Karp & Weiss, PC, 3060 North Swan Rd., Tucson, AZ 85712, **sweiss@karpweiss.com**; Robert Corn-Revere Esq., Davis Wright Termaine, LLP, 1919 Pennsylvania Avenue N.W., Suite 800, Washington, D.C., 20006, **bobcornrevere@dwt.com**; Bruce Feder, Esq., 2930 East Camelback Road, Suite 160, Phoenix, AZ 85016, **bf@federlawpa.com**; Gary Linenberg, Esq., Ariel Neuman, Esq., Gopi K. Panchapakesan, Esq., Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C., 1875 Century Park East, 23rd Floor, Los Angeles, CA 90067, **glincenberg@birdmarella.com**, **aan@birdmarella.com**, **gkp@birdmarella.com**.

s/ Angela Schuetta
 Angela Schuetta
 U.S. Attorney's Office

EXHIBIT A

From: [Rapp, Kevin \(USAAZ\)](#)
To: [Paul Cambria](#); [Tom Bienert](#); [Grant, James](#); [Gary S. Lincenberg](#); [Ariel A. Neuman](#); [Michael Kimerer](#); [Feder Law](#); [Bruce Feder](#); [Michael Piccarreta](#); sweiss@karpweiss.com
Cc: [Jones, Reginald \(CRM\)](#); [Perlmeter, Margaret \(USAAZ\)](#); [Kozinets, Peter \(USAAZ\)](#); [Stone, Andrew \(USAAZ\)](#)
Subject: Doc. 449
Date: Thursday, January 31, 2019 6:03:56 PM
Attachments: [Doc. 449 Order Government's Motion to Compel \(Doc. 352\).pdf](#)
[39 inadvertently disclosed documents ordered destroyed.pdf](#)
[Letter re confirming destruction of docs.docx](#)

Counsel:

As you the know the Court has granted the Government's Motion to Destroy Inadvertently Disclosed Material. (See Doc. 449 attached) The Order requires that the subject documents should be destroyed within five days of the Order (we just received it today in the mail as it was sealed).

Attached is a list identifying the 39 documents that must be destroyed. Lastly, we have attached a letter that confirms that you have complied with the Order. We would like to file a notice advising the Court of compliance. If you have any questions please do not hesitate to contact me.

All the best,

Kevin M. Rapp | Assistant U.S. Attorney
Senior Litigation Counsel
Financial Crimes and Public Integrity Section
U.S. Department of Justice | Office of the United States Attorney
40 N. Central Ave., Ste. 1800, Phoenix, AZ 85004
602.514.7609, kevin.rapp@usdoj.gov

EXHIBIT B

1) DOJ-BP-0004570792
2) DOJ-BP-0004570819
3) DOJ-BP-0004571598
4) DOJ-BP-0004572533
5) DOJ-BP-0004572535
6) DOJ-BP-0004572557
7) DOJ-BP-0004572563
8) DOJ-BP-0004572576
9) DOJ-BP-0004572579
10) DOJ-BP-0004572581
11) DOJ-BP-0004572587
12) DOJ-BP-0004572588
13) DOJ-BP-0004572601
14) DOJ-BP-0004572620
15) DOJ-BP-0004572639
16) DOJ-BP-0004572652
17) DOJ-BP-0004572655
18) DOJ-BP-0004572660
19) DOJ-BP-0004572663
20) DOJ-BP-0004572672
21) DOJ-BP-0004572678
22) DOJ-BP-0004572681
23) DOJ-BP-0004572687
24) DOJ-BP-0004572690
25) DOJ-BP-0004572696
26) DOJ-BP-0004572699
27) DOJ-BP-0004572704
28) DOJ-BP-0004572709
29) DOJ-BP-0004573464
30) DOJ-BP-0004573529
31) DOJ-BP-0004573657
32) DOJ-BP-0004573681
33) DOJ-BP-0004573703
34) DOJ-BP-0004573917
35) DOJ-BP-0004574192
36) DOJ-BP-0004574258
37) DOJ-BP-0004574372
38) DOJ-BP-0004574436
39) DOJ-BP-0004574654

EXHIBIT C



U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 N. Central Ave., Suite 1800
Phoenix, AZ 85004-4408

Main: (602) 514-7500
Main Fax: (602) 514-7693

January 31, 2019

Paul J. Cambria Jr.
Attorney at Law
Lipsitz Green Scime Cambria
42 Delaware Ave | Suite 120
Buffalo, NY 14202
(attorney for Michael Lacey)

Jim Grant
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200,
Seattle, WA 98101
(attorney for Lacey and Larkin)

Robert Corn-Revere
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW,
Suite 800
Washington, DC 20006
(attorney for Lacey and Larkin)

Thomas H. Bienart, Jr., Esq.
Beinart, Miller & Katzman,
PLC
903 Calle Amanecer, Suite 350
San Clemente, CA 92673
(attorney for James Larkin)

Michael D. Kimerer, Esq.
1313 E. Osborn Road
Phoenix, AZ 85014
(attorney for Jed Brunst)

Bruce Feder, Esq.
2930 East Camelback Road, Suite
160
Phoenix, Arizona 85016
(attorney for Scott Spear)

Gary Lincenberg, Esq.
Ariel A. Neuman, Esq.
Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg &
Rhow, P.C.
1875 Century Park East, 23rd
Floor
Los Angeles, California
90067-2561
(attorney for Jed Brunst)

Mike Piccarreta, Esq.
Piccarreta Davis Keenan Fidel PC
2 East Congress Street, Suite 1000
Tucson, AZ 85701
(attorney for Andrew Padilla)

Steve Weiss
Attorney at Law
Karp & Weiss, P.C.
3060 North Swan Rd.
Tucson, Arizona 85712
(attorney for Joye Vaught)

Re: U.S. v. Michael Lacey, et.al.
CR-18-00422-PHX-SPL (BSB)

Dear Counsel:

As you know the Court has issued an Order granting the Government's Motion to Compel Destruction of Inadvertently Disclosed Documents. (Doc. 396) Through this letter, we ask you to confirm that you have destroyed the documents consistent with the Court order. For reference please see the spreadsheet attached to the email that details the documents that the Court has

February 18, 2019

Page 2

ordered destroyed. To supply the requested verification, please insert the name of your client and sign below and return this letter to me by email with your signature:

COUNSEL FOR

BRIAN BENCZKOWSKI
Assistant Attorney General
Criminal Division
U.S. Department of Justice

REGINALD E. JONES
Senior Trial Attorney, CEOS
(202) 616-2807
reginald.jones4@usdoj.gov

ELIZABETH A. STRANGE
First Assistant U.S. Attorney

s/ Kevin M. Rapp
KEVIN M. RAPP
MARGARET PERLMETER
PETER S. KOZINETS
ANDREW STONE
Assistant United States Attorneys

JOHN J. KUCERA
Special Assistant U.S. Attorney

EXHIBIT D

From: Bruce Feder
To: Paul Cambria; Michael Piccarreta
Cc: Rapp, Kevin (USAAZ); Tom Bienert; Grant, James; Gary S. Lincenberg; Ariel A. Neuman; Michael Kimerer; Feder Law; sweiss@karpweiss.com; Erin McCampbell Paris; Jones, Reginald (CRM); Perlmeter, Margaret (USAAZ); Kozinets, Peter (USAAZ); Stone, Andrew (USAAZ); Barbara Polowetz; Whitney Bernstein
Subject: Re: Doc. 449
Date: Thursday, February 7, 2019 9:02:56 PM
Attachments: emailsignature_d62b426c-103f-4958-9e29-50e8f1ce530e111.png

I join in Mr Piccarreta's email response below. I also believe the documents identified in DOC# 449 demonstrate that the government's Brady/Giglio/Bagley obligations have not been complied with, and request the immediate disclosure of all facts, statements, interview reports, notes, memos, recordings and other written and electronic information underlying the documents identified or otherwise discussed in DOC #449.

Bruce Feder
2930 East Camelback Road, Suite 160
Phoenix, Arizona 85016
(602) 257-0135
bf@federlawpa.com

Confidentiality Notice

This email or fax, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. 1510 *et seq.* The information contained in this electronic mail or fax transmission, including any accompanying attachment, is intended solely for its authorized recipient, and may be confidential and/or legally privileged. If you are not an intended recipient, or responsible for delivering some or all of this transmission to an intended recipient, you have received this transmission in error and are hereby notified that you are strictly prohibited from reading, copying, printing, distributing, or disclosing any of the information contained in it. In that event, please contact me immediately by telephone at (602) 257-0135 or by electronic email at bf@federlawpa.com and delete the original and all copies of this transmission, including any attachments, without reading or saving them in any manner.

From: Paul Cambria <pcambria@lglaw.com>
Sent: Thursday, February 7, 2019 1:38 PM
To: Michael Piccarreta
Cc: Rapp, Kevin (USAAZ); Tom Bienert; Grant, James; Gary S. Lincenberg; Ariel A. Neuman; Michael Kimerer; Feder Law; Bruce Feder; sweiss@karpweiss.com; Erin McCampbell Paris; Jones, Reginald (CRM); Perlmeter, Margaret (USAAZ); Kozinets, Peter (USAAZ); Stone, Andrew (USAAZ); Barbara Polowetz
Subject: Re: Doc. 449

I agree with mike

Sent from my iPhone



**Lipsitz Green
Scime Cambria...**

Paul J. Cambria Jr.
Attorney at Law

42 Delaware Ave | Suite 120 | Buffalo, NY 14202
TEL 716 849 1333 x344 | FAX 716 855 1580
email | profile | website | map | vCard

NOTICE: This message contains privileged and confidential information intended only for the use of the persons named above. If you are not the intended recipient, you are hereby notified that any distribution or copying of this message is prohibited.

On Feb 7, 2019, at 3:09 PM, Michael Piccarreta <mlp@pd-law.com> wrote:

We comply as does the Government with all Court orders. I believe this order is an error which is why I wanted to make sure the documents are preserved by the Government and are part of the record for later review. mlp

Michael L. Piccarreta, Esq.
Piccarreta Davis Keenan Fidel PC | 2 East Congress Street, Suite 1000, Tucson, AZ 85701
t 520.622.6900, ext. 133 | f 520-622-0521 | www.pd-law.com

From: Rapp, Kevin (USAAZ) <Kevin.Rapp@usdoj.gov>
Sent: Thursday, January 31, 2019 4:03 PM
To: Paul Cambria <pcambria@lglaw.com>; Tom Bienert <tbienert@bmkattorneys.com>; Grant, James <jimgrant@dwt.com>; Gary S. Lincenberg <glincenberg@birdmarella.com>; Ariel A. Neuman <aneuman@birdmarella.com>; Michael Kimerer <mdk@kimerer.com>; Feder Law <fl@federlawpa.com>; Bruce Feder <bf@federlawpa.com>; Michael Piccarreta <mlp@pd-law.com>; sweiss@karpweiss.com
Cc: Jones, Reginald (CRM) <Reginald.Jones4@usdoj.gov>; Perlmeter, Margaret (USAAZ) <Margaret.Permeter@usdoj.gov>; Kozinets, Peter (USAAZ) <Peter.Kozinets@usdoj.gov>; Stone, Andrew (USAAZ) <Andrew.Stone@usdoj.gov>
Subject: Doc. 449

Counsel:

As you the know the Court has granted the Government's Motion to Destroy

Inadvertently Disclosed Material. (See Doc. 449 attached) The Order requires that the subject documents should be destroyed within five days of the Order (we just received it today in the mail as it was sealed). Attached is a list identifying the 39 documents that must be destroyed. Lastly, we have attached a letter that confirms that you have complied with the Order. We would like to file a notice advising the Court of compliance. If you have any questions please do not hesitate to contact me.

All the best,

Kevin M. Rapp | Assistant U.S. Attorney
Senior Litigation Counsel
Financial Crimes and Public Integrity Section
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40 N. Central Ave., Ste. 1800, Phoenix, AZ 85004
602.514.7609, kevin.rapp@usdoj.gov